same as a violation of a duty created by a rule of the common law. And if in either case such violation results in injury to another, the wrongdoer is liable to him as a matter of law. *Lee* v. *Sterling Silk Mfg. Co.*, 93 N. Y. Supp. 560. The fact that the law may impose a penalty makes no difference unless the penalty be expressly given to the party injured in satisfaction of such injury. *Klatt* v. *The N. C. Foster Lumber Co.*, 97 Wis. 641. In determining when such employment shall be regarded as the proximate cause of the injury, and therefore actionable negligence, the courts are often very liberal to the child. For example, in *Iron and Wire Co.* v. *Green*, 108 Tenn. 161, the company was held liable for injuries sustained by a twelve-year-old boy who had left the building where they had set him to work and was injured while playing with some panels of iron fence on the premises, on the ground that he would not have been on the premises had he not been employed by the company. The employer cannot contend that such injury was not the proximate cause on the ground that the injury was not foreseeable, because the statute itself indicates that such children are unfit by reason of their indiscretion to be so employed. *E. P. Breckenridge Co.* v. *Reagan*, 22 Ohio Cir. Ct. R. 71. The same question arises under the Workmen's Compensation Acts, where the majority opinion holds, as here, that the employer's failure to perform his statutory duties for his employees' safety is negligence *per se*. *Paul Mnfg. Co.* v. *Racine*, 43 Ind. App. 695.

NEGLIGENCE—PEDESTRIAN CROSSING STREET RAILWAY TRACK—ERROR OF JUDGMENT—CONTRIBUTORY NEGLIGENCE.—The plaintiff, before starting to cross a street, saw a car more than a block away rapidly approaching, and when he had crossed the first track saw that the car was approximately thirty feet away, but thinking that he could get across without being struck proceeded without increasing his speed, and was struck. *Held*, he was guilty of contributory negligence as a matter of law. *McGuire* v. *New York Rys. Co.* (N. Y., 1920), 128 N. E. 905.

A pedestrian is bound to make reasonable use of his faculties before crossing a street railway track, in order to ascertain the nearness of approaching cars. That is, the so-called "look and listen" rule applies to street railways as well as to steam railways. *Hooks* v. *Huntsville Ry., Light & Power Co.*, 147 Ala. 700; *Doherty* v. *Detroit Citizens' St. Ry. Co.*, 118 Mich. 209; *Riska* v. *Union Depot Ry. Co.*, 180 Mo. 168; *Kappus* v. *Metropolitan St. Ry. Co.*, 81 N. Y. S. 442; *Harpham* v. *Northern Ohio Traction Co.*, 26 Oh. C. C. R. 253; *Sullivan* v. *Consolidated Traction Co.*, 198 Pa. St. 187; *Stafford* v. *Chippewa Val. Elec. Ry. Co.*, 110 Wis. 331. But see *contra*: *Los Angeles Traction Co.* v. *Conneally*, 136 Fed. 104; *Marden* v. *Portsmouth, K. & Y. St. Ry. Co.*, 100 Me. 41; *Roberts* v. *Spokane St. Ry. Co.*, 23 Wash. 325. See also 19 MICH. L. REV. 452. In addition to looking and listening, the pedestrian must exercise reasonable care for his safety in other respects. Thus, he may not recover for an injury sustained by carelessly stepping in front of an oncoming car which is close upon him when he enters on the track. *Webster* v. *New Orleans, &c., Ry. Co.*, 51 La. An. 299; *Hamilton* v.

Third Ave. Ry. Co., 26 N. Y. S. 754; *Watkins* v. *Union Traction Co.*, 194 Pa. St. 564. But a mere error of judgment as to the distance or speed of the car, such as an ordinarily prudent person might make, will not necessarily preclude a recovery. *Lang* v. *Houston, &c., Ry. Co.*, 75 Hun. 151. *Contra*, see *Sutherland* v. *Cleveland, Etc., Ry. Co.*, 148 Ind. 308. (But this was the case of a steam train, which could not be stopped so readily as an electric car. Upon this difference the case is probably distinguishable.) Obviously, where the case is one of error of judgment, the question is for the jury. 2 THOMPSON, NEGLIGENCE [2nd ed.], § 1452. But it does not necessarily follow that the court should properly have left the question to the jury in the principal case. As in every instance of a fact question being taken from the jury, the query is whether reasonable men could arrive at different conclusions on the evidence adduced. So the difference between a mere error of judgment and an act of plain rashness and folly is one of degree rather than of kind. On authority the court was certainly justified in taking the question from the jury by *Hamilton* v. *Third Ave. Ry. Co., supra*, where the car was going but ten miles an hour and was forty feet away, and it was, nevertheless, held contributory negligence *per se* for the plaintiff to attempt to cross. The case of *Petri* v. *Third Ave. Ry. Co.*, 63 N. Y. S. 315, would carry the court even farther than it was necessary to go in this instance, but it seems that that case is not relied upon as law even in New York. Inasmuch as the "scintilla rule" prevails in New York, it is at least plausible that one of the bases of the dissent in the principal case, either conscious or otherwise, is an aversion, engendered of that rule, to taking any fact question from the jury if there is any relevant evidence on the point.

PAYMENT—ACCEPTANCE OF CHECK AS PAYMENT.—P rendered professional services for D for which D gave a check. P sued D for services rendered and D pleaded payment. *Held*, mere receipt of check subsequently dishonored is not effective as payment. *Feinberg* v. *Levine* (Mass., 1921), 129 N. E. 393.

By the great weight of authority, in the absence of special circumstances showing an actual intent the acceptance of a check will not be treated as payment. *Nat'l Bank of Commerce* v. *Chicago Ry.*, 44 Minn. 224, 9 L. R. A. 263; *Born* v. *First Nat. Bank*, 123 Ind. 78, 7 L. R. A. 442. Where an opposite view has been adopted (*Mehlberg* v. *Tisher*, 24 Wis. 607), it has usually been overruled by later cases. *Willow Lumber Co.* v. *Luger Furniture Co.*, 102 Wis. 636; *Gallagher* v. *Ruffing*, 118 Wis. 284. Even under the majority view the debt is suspended until the check is paid or dishonored. *Phoenix Ins. Co.* v. *Allen*, 11 Mich. 501. And under either view the rule is merely one of presumption which must yield to the actual intent of the parties. *Duncan* v. *Kimball*, 3 Wall (U. S.) 37.

QUO WARRANTO—GOVERNOR MAY SUE ONLY IN GENERAL PUBLIC INTERESTS.—Under a Mississippi statute providing that the governor "may bring any proper suit affecting the general public interests," it was *held* that the